Supreme Court, U
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No. 98-1036

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

THE STATE OF ILLINOIS,

Petitioner,

vs.

SAM WARDLOW, A.K.A. WILLIAM WARDLOW,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

REPLY BRIEF FOR PETITIONER

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ARGUMENT

In its petition, the State of Illinois presented this Court with a cornucopia of reasons why the instant petition should be granted. The respondent has not challenged the majority of those reasons. For example, the respondent does not argue with the fact that the present issue is important, that it is constantly reoccurring and that this Court specifically left it open in *California v. Hodari D.*, 499 U.S. 621, 623 n.1 (1991), and in *Michigan v. Chesternut*, 486 U.S. 567, 572 (1988). Nor does respondent quarrel with the fact that the Illinois Supreme Court decided the present case under the Fourth Amendment to the Federal Constitution. Nor does he dispute that the flight in question here is limited to running at full speed upon the mere sight of the police and that the present facts are practically identical to those in *California v. Hodari D.*, *supra*. Pet. at 11. Finally, respondent does not challenge the fact that lower courts have relied on the suggestion of two members of this Court (Pet. at 7) that flight upon the mere sight of the police can be sufficient reason for a temporary investigative stop and that, accordingly, it would be prudent for this Court to grant the instant petition and determine whether or not this is also the view of the majority of this Court. Rather, the respondent posits only three reasons why this Court should not grant the present petition. However, each of these reasons is meritless and should not deter this Court from directly addressing this important question.

1. The first argument that respondent presents against the granting of the instant petition is a factual one. Ironically, respondent's argument attacks the very opinion from the Illinois Supreme Court that he later

argues was correctly decided. Specifically, the respondent claims that the record is devoid of any facts to support the Illinois Supreme Court's opinion that the location where he was standing, 4035 West Van Buren Street, was a high crime area or that the respondent knew that the car in question contained police officers. Op. Cert. pp. 4-6. In making this assertion, however, the respondent closes his eyes to the record. During the prosecution's cross-examination of Officer Nolan, the following colloquy took place:

> [Prosecutor]: Officer, where was the defendant when you first observed him on that date?
>
> [Officer]: *He was standing approximately in the front of 4035 West Van Buren.*
>
> [Prosecutor]: And let me ask you, Officer, *why was it that you went to that location on that date and time?*
>
> [Officer]: *Its one of the areas in the 11th District that's high narcotics traffic* (sic).
>
> [Prosecutor]: How many partners or police officers went to that location along with you on that date and time?
>
> [Officer]: Including my partner and myself, there were eight of us altogether.
>
> [Prosecutor]: And eight police officers, how many different police cars.
>
> [Officer]: Four.
>
> * * *
>
> [Prosecutor]: What was the purpose for having four cars all converge on that same location on that date and time?
>
> [Officer]: Because of the large number of people. Normally in these different areas there's

> an enormous amount of people, sometimes lookouts, customers.
>
> [Prosecutor]: *And was it your assignment that day*, you and the other four police cars that converged on this area, *to try to investigate narcotics sales in that area.*
>
> [Officer]: *Yes, sir.*

(R. A8-A9) (Emphasis added)

Unquestionably, Officer Nolan's testimony establishes that he and his fellow officers were assigned to investigate narcotics sales in various areas of the 11th District by patrolling said areas. Officer Nolan's testimony also proves that 4035 Van Buren was one of those "areas" being patrolled by the officers because it was an area where there was a high incidence of narcotics sales. Thus, even a casual reading of the record shows that, contrary to respondent's claim, the record sufficiently identifies 4035 West Van Buren as an area where there was a high incidence of narcotics crime.

Additionally, the record establishes that Officer Nolan's car, which was passing in front of the respondent, was the last car in a four car "caravan" that contained a total of eight officers. (R. A9, A10) Further, Officer Nolan was dressed in his full police uniform which included his police badge, name tag and a Chicago Police Department patch on his arm. (R. A11) Finally, the record establishes that the respondent looked at Officer Nolan and his partner and then started to run. (R. A6, A10) Undeniably, and contrary to respondent's arguments, the record fully supports the Illinois Supreme Court's statement that respondent fled upon the approach of a police vehicle. Therefore, because the respondent's factual arguments amount to nothing more

than mere cavil, they present no reason why this Court should not grant the instant petition.

2. The second reason that respondent puts forth, so as to prevent further review by this Court, is that the Illinois Supreme Court's decision is correct. Op. Cert. pp. 6-8. The petitioner disagrees. Without going into an extensive discussion of the merits, the petitioner points out that even the Illinois Supreme Court acknowledged that sudden flight upon the mere sight of the police in a high crime area produces an "inference of guilt". App. 12. But then, the Illinois Supreme Court curiously turned around and held that an "inference of guilt" does not constitute sufficient reasonable suspicion for a temporary investigatory stop. The petitioner submits that this holding is erroneous, untenable and should be reviewed by this Court.

3. The respondent's third and final attempt to preclude review by this Court is his assertion that there is no irreconcilable conflict among the lower courts over the present issue. Op. Cert. pp. 9-10. The petitioner is at a loss to understand how the respondent can seriously dispute that there is an irreconcilable conflict here. All this Court has to do is read the avalanche of cases, both state and federal, in Illinois' petition to see that a conflict does in fact exist and that it is substantial and irreconcilable.

In closing, the petitioner reiterates that the instant petition provides this Court with the truly perfect vehicle to visit and resolve this most important question. The present factual scenario, pursuit of a person in a high crime area who takes sudden flight upon the mere sight of the police, is one that is played out countless times

throughout our nation. These pursuits frequently result in law enforcement officials and/or citizens being injured or killed. The State of Illinois respectfully submits that police officers are entitled to know from the highest Court of the land, before they engage in such pursuits, whether they comport with the Constitution. Accordingly, the petitioner implores this Honorable Court to grant the present petition and give guidance to law enforcement officials, the lower courts and our nation's citizens.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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